

David P. Force, Esq.
Law Offices of Michael Lupolover, P.C.
120 Sylvan Ave., Suite 303
Englewood Cliffs, NJ 07632
(T) (201) 461-0059
(F) (201) 608-7116
(E) DPF@lupoloverlaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
VINCINAGE OF NEWARK**

JEHREL PLASTICS INC.,	) Case No.
individually and on behalf of all others)
similarly situated,	) <u>CLASS ACTION</u>
)
Plaintiff,	) COMPLAINT FOR VIOLATIONS
	) OF:
vs.)
	) 1. NEGLIGENT VIOLATIONS OF
	) THE TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
TYCHEM LLC AND; DOES 1	) §227 ET SEQ.]
through 10, inclusive,	) 2. WILLFUL VIOLATIONS OF THE
	) TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
Defendant(s).	) §227 ET SEQ.]
)
	) <u>DEMAND FOR JURY TRIAL</u>

Plaintiff, JEHREL PLASTICS INC. (“Plaintiff”), on behalf of itself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for itself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of TYCHEM LLC (“Defendants”), in negligently, knowingly, and/or willfully contacting Plaintiff via “telephone facsimile

1 machine” in violation of the Telephone Consumer Protection Act, 47 U.S.C. §
2 227 *et seq.* (“TCPA”), thereby causing Plaintiff and all others similarly situated to
3 incur the costs of receiving unsolicited advertisement messages via “telephone
4 facsimile machines” and invading their privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper in this Court under 28 U.S.C. § 133 because
7 this matter concerns a question of federal law, in particular the Telephone
8 Consumer Protection Act, 47 U.S.C. § 227 *et. seq.*.

9 3. Venue is proper in the United States District Court for the District of
10 New Jersey, Vicinage of Newark pursuant to 28 U.S.C. § 1391(b)(2) because
11 Defendant does business within the state of New Jersey and Plaintiff resides
12 within this District. Specifically, and explained in more detail below, Plaintiff
13 alleges on information and belief, that Defendant faxed advertisements that
14 included direct solicitation of consumers, such as the facsimile communications
15 that Defendant sent to Plaintiff that make up the basis for this case, as explained
16 in detail below. As a result, Defendants both intentionally sought to obtain
17 benefits from this state and within this jurisdictional district, when they sent such
18 facsimile communications to Plaintiff at its place of residence in Bayonne, New
19 Jersey.

20 **PARTIES**

21 4. Plaintiff, JEHREL PLASTICS INC. (“Plaintiff”), is a natural person
22 residing in Bayonne, New Jersey and is a “person” as defined by 47 U.S.C. § 153
23 (39).

24 5. Defendant, TYCHEM LLC (“Defendant” or “DEFENDANT”), is in
25 the business of providing hazardous waste disposal, and is a “person” as defined
26 by 47 U.S.C. § 153 (39).

27 6. The above named Defendant, and its subsidiaries and agents, are
28 collectively referred to as “Defendants.” The true names and capacities of the

1 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
2 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
3 names. Each of the Defendants designated herein as a DOE is legally responsible
4 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend
5 the Complaint to reflect the true names and capacities of the DOE Defendants
6 when such identities become known.

7 7. Plaintiff is informed and believes that at all relevant times, each and
8 every Defendant was acting as an agent and/or employee of each of the other
9 Defendants and was acting within the course and scope of said agency and/or
10 employment with the full knowledge and consent of each of the other Defendants.
11 Plaintiff is informed and believes that each of the acts and/or omissions
12 complained of herein was made known to, and ratified by, each of the other
13 Defendants.

14 **FACTUAL ALLEGATIONS**

15 8. On or about February 15, 2017, Defendant sent Plaintiff a facsimile
16 communications to Plaintiff's facsimile telephone number ending in -6121.

17 9. Defendant contacted Plaintiff via facsimile from telephone number
18 720-710-0671 that belongs to Defendant. Plaintiff was not aware who was
19 contacting it as Plaintiff had never had any relationship between Defendant before
20 receiving these facsimile messages.

21 10. Defendant's fax constituted "telephone solicitation" as defined by
22 the TCPA, 47 U.S.C. § 227(a)(4) and "unsolicited advertisement" as defined by
23 the TCPA, 47 U.S.C. § 227(a)(5). For example, Defendant's fax offered to buy
24 excess raw materials and chemicals from Plaintiff in order to entice Plaintiff to
25 purchase Defendants services. The full facsimile communications are attached
26 hereto as Exhibit A.

27 11. Defendants used a "telephone facsimile machine" as defined by 47
28 U.S.C. § 227(a)(3) to place its calls to Plaintiff seeking to sell or solicit its

1 business services.

2 12. Defendants' calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 13. Defendants' calls were placed to telephone facsimile numbers
5 assigned to a telephone service for which Plaintiff incurs a charge for incoming
6 messages.

7 14. Plaintiff is not a customer of Defendants' services and has never
8 provided any personal information, including his telephone facsimile number(s),
9 to Defendants for any purpose whatsoever. Accordingly, Defendants never
10 received Plaintiff's "prior express consent" to receive calls using a telephone
11 facsimile machine pursuant to 47 U.S.C. § 227(b)(1)(C).

12 **CLASS ALLEGATIONS**

13 15. Plaintiff brings this action on behalf of himself and all others
14 similarly situated, as a member of the proposed class (hereafter "The Class")
15 defined as follows:

16 All persons within the United States who received any
17 solicitation telephone facsimile messages from
18 Defendant or its lead generators to said person's
19 telephone facsimile number made through the use of
20 any telephone facsimile machine within the four years
prior to the filing of this Complaint

21 16. Plaintiff represents, and is a member of, The Class, consisting of All
22 persons within the United States who received any solicitation telephone
23 facsimile messages from Defendant or its lead generators to said person's
24 telephone facsimile number made through the use of any telephone facsimile
25 machine within the four years prior to the filing of this Complaint.

26 17. Defendant, its employees and agents are excluded from The Class.
27 Plaintiff does not know the number of members in The Class, but believes the
28 Class members number in the thousands, if not more. Thus, this matter should be

1 certified as a Class Action to assist in the expeditious litigation of the matter.

2 18. The Class is so numerous that the individual joinder of all of its
3 members is impractical. While the exact number and identities of The Class
4 members are unknown to Plaintiff at this time and can only be ascertained
5 through appropriate discovery, Plaintiff is informed and believes and thereon
6 alleges that The Class includes thousands of members. Plaintiff alleges that The
7 Class members may be ascertained by the records maintained by Defendants.

8 19. Plaintiff and members of The Class were harmed by the acts of
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
10 and Class members via their telephone facsimile numbers thereby causing
11 Plaintiff and Class members to incur certain charges or reduced telephone
12 facsimile time for which Plaintiff and Class members had previously paid by
13 having to retrieve or administer messages left by Defendants during those illegal
14 calls, and invading the privacy of said Plaintiff and Class members.

15 20. Common questions of fact and law exist as to all members of The
16 Class which predominate over any questions affecting only individual members
17 of The Class. These common legal and factual questions, which do not vary
18 between Class members, and which may be determined without reference to the
19 individual circumstances of any Class members, include, but are not limited to,
20 the following:

- 21 a. Whether, within the four years prior to the filing of this Complaint,
22 Defendant sent telephone facsimile messages (other than for
23 emergency purposes or made with the prior express consent of the
24 called party and with an opt-out notice contained in the messages) to
25 a Class member using any telephone facsimile machine to any
26 telephone number assigned to a telephone facsimile service;
27 b. Whether Plaintiff and the Class members were damaged thereby, and
28 the extent of damages for such violation; and
c. Whether Defendant should be enjoined from engaging in such
conduct in the future.

1
2 21. As a person who received a message from Defendant using a
3 telephone facsimile machine, without Plaintiff's prior express consent, Plaintiff is
4 asserting claims that are typical of The Class.

5 22. Plaintiff will fairly and adequately protect the interests of the
6 members of The Class. Plaintiff has retained attorneys experienced in the
7 prosecution of class actions.

8 23. A class action is superior to other available methods of fair and
9 efficient adjudication of this controversy, since individual litigation of the claims
10 of all Class members is impracticable. Even if every Class member could afford
11 individual litigation, the court system could not. It would be unduly burdensome
12 to the courts in which individual litigation of numerous issues would proceed.
13 Individualized litigation would also present the potential for varying, inconsistent,
14 or contradictory judgments and would magnify the delay and expense to all
15 parties and to the court system resulting from multiple trials of the same complex
16 factual issues. By contrast, the conduct of this action as a class action presents
17 fewer management difficulties, conserves the resources of the parties and of the
18 court system, and protects the rights of each Class member.

19 24. The prosecution of separate actions by individual Class members
20 would create a risk of adjudications with respect to them that would, as a practical
21 matter, be dispositive of the interests of the other Class members not parties to
22 such adjudications or that would substantially impair or impede the ability of such
23 non-party Class members to protect their interests.

24 Defendants have acted or refused to act in respects generally applicable to The
25 Class, thereby making appropriate final and injunctive relief with regard to the
26 members of the California Class as a whole.
27
28

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-24.

26. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

27. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

28. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

29. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

30. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

31. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

32. Plaintiff and the Class members are also entitled to and seek

injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

33. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff reserves their right to a jury on all issues so triable.

1 Respectfully Submitted this 30th Day of October, 2017.

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4 By: /s/ David. P. Force, Esq.
5 David P. Force, Esq.
6 Law Offices of Michael Lupolover, P.C.
7 120 Sylvan Ave., Suite 303
8 Englewood Cliffs, NJ 07632
9 (T) (201) 461-0059
(F) (201) 608-7116
(E) DPF@lupoloverlaw.com

10 Matthew Sheffield, Esq.
11 Law Offices of Michael Lupolover, P.C.
12 120 Sylvan Ave., Suite 303
13 Englewood Cliffs, NJ 07632
14 (T) (201) 461-0059
15 (F) (201) 608-7116
16 (E) DPF@lupoloverlaw.com

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Attorneys for Plaintiff

EXHIBIT A

02-15-2017 12:12

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Jerhel Plastics, Inc.

1/1

ATTENTION CHEMICAL PURCHASING AGENT

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